



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

DOCKET NO.: EPCRA-08-2004-0002

IN THE MATTER OF:

SUNNYSIDE COGENERATION ASSOCIATES)

One Power Plant Road

Sunnyside, Utah 84539

Respondent

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

June 30, 2004

DATE

SIGNED

Alfred C. Smith

Regional Judicial Officer



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. **EPCRA-08-2004-0002**

IN THE MATTER OF:)	
)	
Sunnyside Cogeneration Associates)	COMPLAINT AND EXPEDITED
One Power Plant Road)	SETTLEMENT AGREEMENT (CESA)
Sunnyside, Utah 84539)	
Respondent.)	
_____)	

A. JURISDICTION

1. This Complaint and Expedited Settlement Agreement (“CESA”) is issued to Sunnyside Cogeneration Associates (“Respondent”) for violating section 313(b) of the Emergency Planning and Community Right-to-Know Act of 1986, (hereinafter "EPCRA") and the implementing regulations at 40 C.F.R. Part 372.

2. The undersigned Environmental Protection Agency (“EPA”), Region 8 officials issue this CESA under the authority vested in the Administrator of EPA by section 328 of EPCRA, 42 U.S.C. § 11048 of EPCRA.

3. This section authorizes EPA to bring an action under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), for civil administrative penalties against Sunnyside Cogeneration Associates (“Respondent”) who has violated, or is in violation of, a requirement or prohibition of the rule.

4. Pursuant to sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting; Community Right-to-Know Rule, 40 CFR part 372. Section 313(b) of EPCRA, 40 C.F.R. § 372.22, addresses owners or operators of facilities that have 10 or more full time employees, are in Standard Industrial Classification Codes, and manufactured, imported, processed, or otherwise used a toxic chemical listed under section 313(c) of EPCRA, 40 C.F.R. § 372.65, in quantities exceeding the appropriate threshold as set forth in 40 C.F.R. § 372.25.

B. ALLEGED VIOLATION

1. EPA alleges that Respondent is an owner and operator of a power plant facility located at one Power Plant Road, Sunnyside, Utah, subject to the requirements of section 313(b) of EPCRA and 40 CFR part 372.

2. Under section 313(b) of EPCRA, owners or operators are required to annually submit by July 1st, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (1-90) (hereinafter "Form R"), for each toxic chemical listed under section 313(c) of EPCRA, 40 CFR § 372.65, that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds.

3. EPA inspected the facility on December 1, 2003, and noted that the Respondent had failed to submit its Form R for the toxic chemical, mercury, by July 1, 2002, and July 1, 2003, and for the toxic chemical, lead, by July 1, 2003, for quantities exceeding the established toxic chemical thresholds for mercury and lead that were processed or otherwise used during the preceding calendar years.

3. Respondent's failure to submit its Form R reports for mercury processed or otherwise used during for calendar years 2001, and 2002, and for lead processed or otherwise used during for calendar year 2002, constitutes three violations of section 313(b) of EPCRA and 40 C.F.R. §370.20(b)(2).

4. Upon consideration of the nature, circumstances, extent and gravity of the violations, and Respondent's ability to pay, prior history of compliance, degree of culpability, lack of economic benefit resulting from the violations, its good faith and immediate effort to comply once informed of the violations, its agreement to perform a Supplemental Environmental Project (SEP), other matters as justice may require, and upon consideration of the entire record herein, EPA offers this CESA under its expedited enforcement procedures in order to settle the violations based upon the findings noted above, for the total civil penalty amount of four thousand seven hundred seventy dollars and twenty five cents (\$4,770.25).

C. CIVIL PENALTY

1. The Respondent signing below admits that EPA has jurisdiction over the subject matter alleged in the CESA, admits that the facility is subject to section 313(b) of EPCRA, neither admits nor denies the factual allegations contained in the CESA, and consents to the assessment of the total civil penalty amount of four thousand seven hundred seventy dollars and twenty five cents (\$4,770.25).

2. Respondent consents and agrees that not more than 30 days after Respondent's receipt of a signed Final Order in this matter, Respondent shall pay a civil penalty in the amount of four thousand seven hundred seventy dollars and twenty five cents (\$4,770.25) by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

Mellon Bank
EPA Region 8
(Regional Hearing Clerk)
P.O. Box 360859M
Pittsburgh, PA 15251

The check shall reference the name and address of Respondent's facility and the EPA docket number of this action.

4. A **copy of the cashier's or certified check** shall be sent simultaneously to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and

Brenda L. Morris (8ENF-L)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

5. Respondent further agrees and consents that if Respondent fails to pay the penalty amount within 30 days of receipt of the Final Order, interest on the penalty amount shall accrue at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. A late payment charge of fifteen dollars (\$15.00) shall be imposed after the first 30 days that the payment, or any portion thereof, is overdue, with an additional charge of fifteen dollars (\$15.00) imposed for each subsequent 30-day period until the payment due is made. In addition, a six percent (6%) per annum penalty shall be applied on any principal amount not paid within 90 days after receipt of the final order.

D. SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

1. Respondent agrees to complete the following SEP and expend at least twenty three thousand five hundred and fifty dollars (\$23,550) within of six months of receipt of a signed Final Order in this matter:

- a. Respondent shall perform an asphalt-paving SEP project to mitigate fugitive dust, including mercury and lead particulate, along a material handling haul road approximately 40 feet wide by 440 feet in length at the facility.
- b. Respondent shall provide Complainant with a SEP Completion Report that includes, but is not limited to, pictures of the completed paved road, documentation of the itemized costs, and copies of purchase orders and receipts or canceled checks evidencing the total expenditure of the SEP of at least twenty three thousand five hundred and fifty dollars (\$23,550); and
- c. Respondent shall provide certification that the SEP has been fully implemented pursuant to the provisions of this CESA.

2. Respondent hereby certifies that, as of the date of this CESA, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

3. Whether Respondent has complied with the terms of this CESA by performing the asphalt paving project shall be the sole determination of EPA.

4. In the event that Respondent fails to comply with any of the terms or provisions of this agreement relating to the performance of the SEP described in paragraph D.1. a.-c., above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the total SEP expenditure described in paragraph D. 1., above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. If the SEP has not been completed satisfactorily, Respondent shall pay a stipulated penalty to the United States in the amount of fifteen thousand dollars (\$15,000).

b. If the SEP has been satisfactorily completed, and Respondent spent less than the amount of money required to be spent for the project, Respondent shall pay to the U.S. Treasury the difference between the amount actually spent on the SEP and twenty three thousand five hundred and fifty dollars within thirty (30) days of written demand by EPA.

d. For failure to submit the SEP Completion Report required by paragraph D.1.b., above, Respondent shall pay to the U.S. Treasury, within thirty (30) days of written demand by EPA, a stipulated penalty in the amount of One Hundred Dollars (\$100) for each calendar day after the day the SEP Completion Report was originally due until the day that the SEP Completion Report is received by EPA.

e. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph C.2., above. Interest and late charges on stipulated penalties owed shall be paid as stated in the paragraph C.5., above.

E. TERMS AND CONDITIONS

1. Upon completion of the Respondent's signing and submission of this CESA, satisfactory completion of the SEP, and payment of the penalty amount, EPA will take no further action against the Respondent for the alleged violations of EPCRA described in section B, above. EPA does not waive any enforcement action by EPA for any other past, present, or future

violations under EPCRA or any other statute.

2. Nothing in this CESA shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CESA.

3. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions for this CESA and to bind the party he represents to the terms and conditions of this CESA.

4. The parties agree to submit this CESA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

5. Each party shall bear its own costs and attorneys fees in connection with this matter.

6. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this CESA pursuant to 40 C.F.R. § 22.15. Upon signing and returning of this CESA to EPA, the Respondent waives the opportunity for a hearing pursuant to Section 554 of the Administrative Procedure Act, 5 U.S.C. §554.

7. This CESA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this CESA. This CESA, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violation alleged in the CESA.

8. If the signed CESA is not returned in correct form by the Respondent to EPA at the above-referenced address, within 15 days of the date of the receipt of this CESA, the CESA is withdrawn, without prejudice to EPA's ability to file additional enforcement actions for the violations identified in this CESA, including an Administrative Complaint against Respondent seeking penalties of up to \$27,500 per day of violation pursuant to Section 325(c), 42 U.S.C. §11045(c).

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: 6.4.04

By: David J. Janik for/
Michael T. Risner, Director
Legal Enforcement Program

Date: 6/23/04 By: SIGNED

Martin Hestmark, Director
Technical Enforcement Program

Date: 6/25/04

By: SIGNED
Brenda L. Morris, Attorney
Legal Enforcement Program

**SUNNYSIDE COGENERATION ASSOCIATES,
Respondent.**

Date: 6/21/04

By: Kendall Reed
(Print name of authorized agent)

By: SIGNED
(Signature of authorized signature)

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **SUNNYSIDE COGENERATION ASSOCIATES, DOCKET NO.: EPCRA-08-2004-0002** was filed with the Regional Hearing Clerk on June 30, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on June 30, 2004, to:

Brian W. Burnett
Gateway Tower East Suite 900
10 East South Temple
Salt Lake City, UT 84133

June 30, 2004

SIGNED _____
Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON JUNE 30, 2004.**